

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,) Case No. 1:19-CR-00125A
) (RJA) (JJM)
vs.) November 5th, 2019
LAMARIO MILLS,)
Defendant.)

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR., ESQ.
UNITED STATES ATTORNEY
BY: JEREMIAH LENIHAN, ESQ.
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138 Delaware Avenue
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For the Defendant: LAW OFFICE OF THOMAS EOANNOU,
BY: THOMAS EOANNOU, ESQ.
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Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, NY 14202

09:58AM 1 THE CLERK: Criminal action 2019-125A. United States
09:58AM 2 v. Lamario Mills. Oral argument on government's motion to
09:58AM 3 revoke release order of Magistrate Judge Jeremiah J. McCarthy.
09:58AM 4 Counsel, please state your name and the party you represent
09:58AM 5 for the record.

09:58AM 6 MR. LENIHAN: Good morning, Your Honor. Jerry
09:58AM 7 Lenihan on behalf of the United States.

09:58AM 8 MR. EOANNOU: Good morning, Judge. Tom Eoannou on
09:58AM 9 behalf of Lamario Mills.

09:58AM 10 THE COURT: Good morning, Mr. Lenihan.

09:58AM 11 MR. LENIHAN: Thank you, Your Honor. Your Honor, the
09:59AM 12 government has filed a brief. We have been before this Court
09:59AM 13 previously. I'm not going to go into too much detail on the
09:59AM 14 3142(g) factors, but I do want to note, regarding the nature
09:59AM 15 and circumstance of this offense, this was a large-scale,
09:59AM 16 open-air drug market in which the defendant had a leadership
09:59AM 17 role in that open-air drug market.

09:59AM 18 The weight of the evidence is exceedingly strong, in
09:59AM 19 that law enforcement conducted a total of 27 controlled
09:59AM 20 purchases of cocaine base; 12 of which were from the
09:59AM 21 defendant; 11 of those 12 controlled purchases were captured
09:59AM 22 on audio and video recording. In addition, there's pole cam
09:59AM 23 footage that places the defendant in the area of 67 and 76
09:59AM 24 Townsend on a continuous basis.

09:59AM 25 The Court, in its prior decision remanding this case

09:59AM 1 back to Judge McCarthy, noted that there were certain
09:59AM 2 uncharged conduct in the case that the government has
09:59AM 3 proffered. And that namely surrounds the evidence that was
10:00AM 4 recovered from the defendant's residence at 1985 Delaware
10:00AM 5 Avenue, apartment 1G. And that was on June 18th, 2019.

10:00AM 6 The Grand Jury has returned a superseding indictment.
10:00AM 7 Instead of uncharged, it's now charged conduct. The defendant
10:00AM 8 was in possession of 745 grams of cocaine that was placed
10:00AM 9 inside of a dishwasher. Next to the dishwasher were tools
10:00AM 10 used to take cocaine and cook it into cocaine base, such as
10:00AM 11 spatulas, tongs, pots and pans.

10:00AM 12 There was also \$35,000 that was recovered from inside
10:00AM 13 the defendant's residence. The street value of \$35,000 of --
10:00AM 14 in cash is over 1,000 kilos of cocaine. So, it is now -- the
10:00AM 15 defendant is charged with not just one, two, but three drug
10:00AM 16 premises that he's maintaining; 76 Townsend, 67 Townsend and
10:00AM 17 his residence. The case against the defendant is exceedingly
10:00AM 18 strong. It does not get much stronger, based on the evidence
10:01AM 19 that we have developed in this case.

10:01AM 20 Regarding the history and characteristics of this
10:01AM 21 defendant, he's been arrested 10 times. He has one felony
10:01AM 22 conviction, one misdemeanor conviction. He's been arrested in
10:01AM 23 the area of 67 and 76 Townsend numerous times. He was
10:01AM 24 arrested during the execution of a search warrant in June of
10:01AM 25 2017 where law enforcement recovered a hand gun. The

1 defendant was excluded as a DNA contributor of that handgun,
2 but it still shows his proximity to that area.

3 The defendant lied to probation when he was asked
4 where he lived. He was asked where he lived and he said he
5 lived at 65 James John [sic] Audubon Drive. There is no 65
6 John James Audubon Drive. It's not a residence. It looks
7 like it's a complex where individuals go to work.

8 The defendant was living at 1985 Delaware Avenue in
9 Buffalo, New York. He lied to the probation department. He
10 also lied about how much money was recovered from inside his
11 residence. He stated that he had between 6 and 7,000, when,
12 in fact, he had \$35,000.

13 And I mentioned this in my brief and I think it's
14 important to point out that this Court has taken lies that
15 have been proffered in front of a Court seriously in *State vs.*
16 *Williams*, stating that if the defendant is willing to lie to a
17 Court, then a defendant does not appreciate the risk and the
18 consequences of being released and not committing more crimes,
19 making him a danger to the community and a flight risk.

20 On top of that, Your Honor, we have information that
21 the defendant has been unemployed. He mentioned that he's a
22 landscaper. We don't have any evidence to verify that he's a
23 been a landscaper. All the evidence points that he's a large-
24 scale drug trafficker. And I mentioned in our brief about how
25 we can prove the leadership enhancement and the amount of

10:03AM 1 proceeds that was recovered from the defendant. \$35,000 is a
10:03AM 2 factor for this Court to consider, as it is a large share of
10:03AM 3 the fruits of the crime.

10:03AM 4 The defendant was also in 76 Townsend on numerous
10:03AM 5 occasions. A new piece of evidence that we have recovered,
10:03AM 6 that I have turned over to defense counsel, is when law
10:03AM 7 enforcement executed the search warrant of 76 Townsend on
10:03AM 8 June 18, 2019, they found a Home Depot receipt in the name of
10:03AM 9 Mario Mills.

10:03AM 10 We sent out a subpoena to Home Depot and we learned
10:03AM 11 that the defendant purchased approximately \$1,300 worth of
10:03AM 12 material for 76 Townsend, things like pavers and fencing. So
10:03AM 13 what does that tell you? That tells you that this defendant
10:03AM 14 controlled that premise. And that premise is one of the
10:03AM 15 central locations in this drug trafficking organization. So,
10:03AM 16 it shows his control over a central tenant of the -- of this
10:03AM 17 organization, this location. That helps prove his leadership
10:04AM 18 role.

10:04AM 19 We also have evidence that the defendant was yelling
10:04AM 20 at lookouts on one occasion, that he was yelling to a lookout
10:04AM 21 that they had not alerted him that a C District Buffalo Police
10:04AM 22 car was around the corner. And the defendant was also yelling
10:04AM 23 at co-defendant Vernon James that his count was off; that
10:04AM 24 Vernon James owed money to Lamario Mills.

10:04AM 25 All of this together and in addition to what I have

1 referenced in our brief, help demonstrate the defendant is
2 deserving of a leadership enhancement; that the defendant was
3 in control or was at least a leader, an organizer, supervisor,
4 manager in this large-scale drug trafficking network.

5 Based on all that, Judge, when you look at the
6 3142(g) factors, when you take a look at the presumption that
7 applies in this case, the government maintains that the
8 defendant is both a flight risk and that he is a danger to the
9 community and we ask the Court to revoke Judge McCarthy's
10 order.

11 MR. EOANNOU: Judge, he's not a flight risk. And
12 he's not a danger to the community.

13 THE COURT: How can you say he's not a danger to the
14 community, based on what the government has just said?

15 MR. EOANNOU: Very, very, very simply --

16 THE COURT: He's charged in 19 counts.

17 MR. EOANNOU: Very simply, Judge.

18 THE COURT: I'm interested to hear.

19 MR. EOANNOU: I can, because they started
20 investigating for nine months, from the point they made their
21 first buy to the last buy and left him out there making less
22 than \$100 buys.

23 THE COURT: What does that prove?

24 MR. EOANNOU: Well, exactly what Judge McCarthy said
25 and he said that it undercuts the government's argument. It

10:05AM 1 undercuts the government's --
10:05AM 2 THE COURT: How does it --
10:05AM 3 MR. EOANNOU: Because if you're a danger to the
10:05AM 4 community, go and arrest him. You don't let him make --
10:05AM 5 THE COURT: That is a bogus argument.
10:05AM 6 MR. EOANNOU: It's not a bogus argument. You don't
10:05AM 7 have to make 11 --
10:05AM 8 THE COURT: I'm not persuaded by that at all.
10:05AM 9 MR. EOANNOU: Well, Judge, let me go through it.
10:05AM 10 THE COURT: All right.
10:05AM 11 MR. EOANNOU: Let me go through it.
10:05AM 12 THE COURT: Go through it, but I'm not persuaded by
10:05AM 13 what you're arguing. You need a better reason.
10:05AM 14 MR. EOANNOU: Judge, he was only -- he's never been
10:05AM 15 to jail. He was on probation. He was supervised for five
10:05AM 16 years and not one single incident of being a danger to the
10:05AM 17 community, not one arrest.
10:05AM 18 But let me go further, because we have had this
10:06AM 19 argument like, three times. He was arrested June 18th. And
10:06AM 20 they go before Judge McCarthy and they say the same thing they
10:06AM 21 said today, that he's a risk of flight and a danger to the
10:06AM 22 community. The Judge says, I'm going to release him, \$5,000
10:06AM 23 cash bond, \$1,500 apiece from the three individuals who are
10:06AM 24 here today, a \$15,000 signature bond and electronic
10:06AM 25 monitoring.

10:06AM 1 The government moves for a stay. They don't like the
10:06AM 2 decision. They come in here, you send it back and say to the
10:06AM 3 court, the lower court, prepare a statement of reasons. We --

10:06AM 4 THE COURT: Obviously, I wasn't satisfied with the
10:06AM 5 reasons they gave.

10:06AM 6 MR. EOANNOU: Correct.

10:06AM 7 THE COURT: So, that's why I sent it back.

10:06AM 8 MR. EOANNOU: I understand that, which is certainly
10:06AM 9 the Court's prerogative.

10:06AM 10 THE COURT: Thank you.

10:06AM 11 MR. EOANNOU: We go back in front of Judge McCarthy.
10:06AM 12 Now, we substantially increase what we post for bail to
10:06AM 13 assure --

10:06AM 14 THE COURT: What does the amount of bail have to do
10:06AM 15 with whether or not a person is a danger to the community? I
10:06AM 16 don't get that.

10:06AM 17 MR. EOANNOU: Well, the amount of bail --

10:07AM 18 THE COURT: What does that have to do about danger to
10:07AM 19 the community?

10:07AM 20 MR. EOANNOU: When the sister puts up her house that
10:07AM 21 she lives in at 95 Furhmann and Judge McCarthy tells her if
10:07AM 22 he's a danger to the community or commits another crime, I'm
10:07AM 23 taking the house that you live in, that should suffice to show
10:07AM 24 the Court that the family has confidence in him, coupled with
10:07AM 25 the fact that while he was on five years probation he never

10:07AM 1 had a problem being a danger to the community. On top of the
10:07AM 2 fact that the government, for 11 months, didn't say, let's go
10:07AM 3 grab him off the street -- or nine months -- they left him out
10:07AM 4 there.

10:07AM 5 THE COURT: Why would the government -- if they're
10:07AM 6 conducting a criminal investigation, the person is -- has been
10:07AM 7 involved in criminal activity. Your argument is that they
10:07AM 8 should arrest him right away. I don't like that argument at
10:07AM 9 all.

10:07AM 10 MR. EOANNOU: No. My argument isn't arrest him right
10:07AM 11 away. My argument is, you had controlled buy after controlled
10:07AM 12 buy after controlled buy. You don't need to wait nine months.
10:07AM 13 Nine months is --

10:07AM 14 THE COURT: Why do you -- I don't understand the
10:07AM 15 logic of that argument.

10:07AM 16 MR. EOANNOU: Because if he's a danger to the
10:08AM 17 community and he's violent and he's selling drugs --

10:08AM 18 THE COURT: That's your position. That's not the
10:08AM 19 government's position. They want to have a thorough
10:08AM 20 investigation. So, why would they stop the investigation
10:08AM 21 earlier than they think is worthy to be stopped? I don't get
10:08AM 22 the connection in your argument.

10:08AM 23 MR. EOANNOU: They say he's an organizer, supervisor
10:08AM 24 or leader.

10:08AM 25 THE COURT: Well, that's up for the court proceeding.

10:08AM 1 MR. EOANNOU: And they have controlled buys on video,
10:08AM 2 according to them. That was --
10:08AM 3 THE COURT: Have you seen the controlled buys?
10:08AM 4 MR. EOANNOU: Of course I've seen the --
10:08AM 5 THE COURT: Is there something fraudulent about them?
10:08AM 6 MR. EOANNOU: No.
10:08AM 7 THE COURT: Is the evidence fairly strong?
10:08AM 8 MR. EOANNOU: I would agree that the evidence in this
10:08AM 9 case is fairly strong and that's only one factor for the Court
10:08AM 10 to consider.
10:08AM 11 THE COURT: I agree.
10:08AM 12 MR. EOANNOU: So, when you go back and see what we
10:08AM 13 proposed to Judge McCarthy, even though probation set a
10:08AM 14 \$10,000 secured bond twice, probation has inspected the home.
10:08AM 15 Probation, from day one, has said release him on 10,000. We
10:08AM 16 came in and this time said home incarceration. There goes
10:08AM 17 your argument for danger to the community because he'll be
10:09AM 18 inside, in a house that his sister will live in.
10:09AM 19 THE COURT: But that only goes so far. If you're in
10:09AM 20 a house -- you know, I have always had a little problem with
10:09AM 21 home detention as eliminating a danger to the community. I
10:09AM 22 don't quite appreciate the fact that if someone is on home
10:09AM 23 detention that somehow or other that removes the persons
10:09AM 24 involved in what may be criminal activities.
10:09AM 25 MR. EOANNOU: Well, they're not out on the street.

10:09AM 1 THE COURT: Well, that's neither here nor there. So
10:09AM 2 what?

10:09AM 3 MR. EOANNOU: Well, it is, because a lot of the
10:09AM 4 crimes in this particular case goes in favor of the defense.
10:09AM 5 Because in this particular case, he wasn't doing anything out
10:09AM 6 of 95 Furhmann. And he was doing it at other houses, which he
10:09AM 7 wouldn't have --

10:09AM 8 THE COURT: Why am I having trouble with your
10:09AM 9 argument? I'm having trouble recognizing the value of your
10:09AM 10 argument.

10:09AM 11 MR. EOANNOU: Okay. Let me say this, Judge.

10:09AM 12 THE COURT: All right. Go ahead. Try another way,
10:09AM 13 please.

10:09AM 14 MR. EOANNOU: Home detention, I understand you're
10:09AM 15 argument --

10:09AM 16 THE COURT: Okay.

10:09AM 17 MR. EOANNOU: -- with electronic monitoring.

10:10AM 18 THE COURT: Okay.

10:10AM 19 MR. EOANNOU: Instead of a \$10,000 secured bond, as
10:10AM 20 recommended by probation twice, \$50,000. We had the house
10:10AM 21 appraised by a certified appraiser. We showed that the taxes
10:10AM 22 were paid. We did everything we could to show that there was
10:10AM 23 more than 50,000 in equity. Also in cash, 1,500 to 2,500
10:10AM 24 apiece, as you know from the decision and order from McCarthy
10:10AM 25 and three separate signature bonds at 15,000 apiece.

10:10AM 1 Now, what the Court said below was the new charges
10:10AM 2 are not different in substance from the original conduct.
10:10AM 3 Basically, they --
10:10AM 4 THE COURT: Is that true?
10:10AM 5 MR. EOANNOU: That's what the lower Court said, yes.
10:10AM 6 It's a quote.
10:10AM 7 THE COURT: No. No. Is that true?
10:10AM 8 MR. LENIHAN: It's the uncharged conduct that we
10:10AM 9 previously proffered.
10:10AM 10 THE COURT: Now it's the charged?
10:10AM 11 MR. LENIHAN: Now it's charged.
10:10AM 12 THE COURT: It's little different, isn't it, Mr. --
10:10AM 13 MR. EOANNOU: No. The Court -- no. He was charged
10:10AM 14 when we argued the second argument in front of Judge
10:10AM 15 Magistrate McCarthy.
10:10AM 16 THE COURT: I'm not following you.
10:10AM 17 MR. EOANNOU: We went down. There was a superseding
10:10AM 18 indictment. We reargued that the Court was well aware of the
10:11AM 19 new charges. And the Court said the new charges are not
10:11AM 20 different in substance from the original conduct.
10:11AM 21 THE COURT: Well, they weren't charged before.
10:11AM 22 MR. EOANNOU: Right. And when they --
10:11AM 23 THE COURT: Is there a difference?
10:11AM 24 MR. EOANNOU: Judge, when they were charged --
10:11AM 25 THE COURT: Do you think there's a difference when

10:11AM 1 there's information about criminal conduct versus being
10:11AM 2 charged with that conduct? Do you think there's any
10:11AM 3 difference?

10:11AM 4 MR. EOANNOU: Yes. And Judge McCarthy heard it.

10:11AM 5 THE COURT: And?

10:11AM 6 MR. EOANNOU: And his quote was the new charges are
10:11AM 7 not different in substance from the original conduct.

10:11AM 8 THE COURT: Hold it right there. And you agree with
10:11AM 9 that?

10:11AM 10 MR. EOANNOU: It's in his decision, Judge.

10:11AM 11 MR. LENIHAN: We proffered exactly -- essentially
10:11AM 12 what I proffered today, is that on the date of the defendant's
10:11AM 13 arrest on June 18, 2019, he was in possession of cocaine,
10:11AM 14 cash. That was uncharged when we initially proffered in front
10:11AM 15 of Judge McCarthy and when we came before Your Honor and Your
10:11AM 16 Honor heard the appeal, we have taken that conduct from
10:11AM 17 uncharged to now charged.

10:11AM 18 THE COURT: You don't think there's any difference?

10:12AM 19 MR. EOANNOU: No. They're basically --

10:12AM 20 THE COURT: Let's put it this way, Mr. Eoannou. If
10:12AM 21 you have uncharged conduct that may or may not be relevant to
10:12AM 22 a different issue, maybe of sentencing --

10:12AM 23 MR. EOANNOU: Right.

10:12AM 24 THE COURT: -- versus charged conduct, which
10:12AM 25 obviously, if he's convicted of it, would have a significant

10:12AM 1 effect on a person's proposed sentence.

10:12AM 2 MR. EOANNOU: It's still a five --

10:12AM 3 THE COURT: So, there's a difference.

10:12AM 4 MR. EOANNOU: Yes. It's still a five-year mandatory
10:12AM 5 minimum. And when Judge McCarthy heard that exact same
10:12AM 6 argument from the government, his written decision was that
10:12AM 7 the new charges are not different in substance from the
10:12AM 8 original conduct and was not a basis to detain someone.

10:12AM 9 And --

10:12AM 10 THE COURT: I don't quite understand that argument,
10:12AM 11 to be honest with you. I mean, he may have said that, but I'm
10:12AM 12 having trouble understanding it.

10:12AM 13 MR. EOANNOU: Basically, it's Counts 35 through 39.
10:12AM 14 They added sales counts that they knew about for nine months.

10:13AM 15 And then they talked about --

10:13AM 16 THE COURT: What's the significance with the nine
10:13AM 17 months?

10:13AM 18 MR. EOANNOU: Again, Judge, if the government thought
10:13AM 19 that he was such a danger, they wouldn't be leaving someone
10:13AM 20 out on the street.

10:13AM 21 THE COURT: Mr. Eoannou, you are an experienced
10:13AM 22 criminal defense lawyer. When they're conducting -- the
10:13AM 23 government is conducting a criminal investigation, they want
10:13AM 24 to make sure, I assume, that it's thorough. They're not under
10:13AM 25 any time requirement.

10:13AM 1 MR. EOANNOU: And when a person is dangerous, they
10:13AM 2 get him off the street.

10:13AM 3 THE COURT: That's not true. What do you -- how can
10:13AM 4 you say that?

10:13AM 5 MR. EOANNOU: They leave dangerous people on the
10:13AM 6 street, Judge? I don't think so.

10:13AM 7 THE COURT: Well, if the investigation is complete,
10:13AM 8 yes, they'll charge him. If it's not complete, they won't.

10:13AM 9 MR. EOANNOU: Well, if he's the top guy and he has
10:13AM 10 hand-to-hand sales --

10:13AM 11 THE COURT: That, I don't have any idea.

10:13AM 12 MR. EOANNOU: That's my point. If he's the head guy,
10:13AM 13 your investigation, you got the big fish, it's complete. And
10:13AM 14 you got him on video making a sale, not making one, making
10:13AM 15 ten, I think your investigation is complete. And that's --

10:13AM 16 THE COURT: That's not your decision. That's up to
10:13AM 17 the government to make that decision.

10:13AM 18 MR. EOANNOU: But it's my argument in terms of how
10:14AM 19 dangerous would he have been if they had left him out there
10:14AM 20 and made one buy after another. And by the way, they talk
10:14AM 21 about this big conspiracy. They're \$100 buys. They made 27
10:14AM 22 buys in this case, for what reason I don't know. You're more
10:14AM 23 experienced than I am, but normally they don't make 27; 35
10:14AM 24 grams total. That's how big this drug conspiracy is. So --

10:14AM 25 THE COURT: How much money was found in the house?

10:14AM 1 MR. LENIHAN: \$35,000.

10:14AM 2 THE COURT: Does the defendant work?

10:14AM 3 MR. LENIHAN: Not to the government's knowledge.

10:14AM 4 THE COURT: Do you have 35,000 in your house,

10:14AM 5 Mr. Eoannou?

10:14AM 6 MR. EOANNOU: No, Judge. If I did, my wife would

10:14AM 7 take it.

10:14AM 8 THE COURT: I don't think I have ever seen \$35,000.

10:14AM 9 I don't think I have ever seen \$35,000 in cash, at least as it

10:14AM 10 relates to me.

10:14AM 11 MR. EOANNOU: My point --

10:14AM 12 THE COURT: You think that is a normal way, that

10:14AM 13 people will hold \$35,000 in a house?

10:14AM 14 MR. EOANNOU: No, Judge, but if he's working off the

10:14AM 15 books, that's not --

10:14AM 16 THE COURT: What was he doing? What kind of work was

10:14AM 17 he doing?

10:14AM 18 MR. EOANNOU: He is a landscaper, Judge. He does do

10:15AM 19 landscaping and most landscapers want to be paid off the

10:15AM 20 books. That's just the nature of the beast.

10:15AM 21 THE COURT: How can you say that? Most landscapers

10:15AM 22 are corrupt?

10:15AM 23 MR. EOANNOU: No, Judge. I don't know what they do

10:15AM 24 when they give you cash, but I can tell you that landscapers

10:15AM 25 prefer to be paid in cash.

10:15AM 1 THE COURT: I have never paid a landscaper in cash.

10:15AM 2 MR. EOANNOU: I can tell you as --

10:15AM 3 THE COURT: You have?

10:15AM 4 MR. EOANNOU: Many years. No, Judge, but they have

10:15AM 5 asked repeatedly.

10:15AM 6 THE COURT: Pardon me?

10:15AM 7 MR. EOANNOU: It's always -- in that type of

10:15AM 8 business, Judge --

10:15AM 9 THE COURT: How can you make that argument, that

10:15AM 10 landscapers always want to be paid in cash?

10:15AM 11 MR. EOANNOU: I don't say always, Judge.

10:15AM 12 THE COURT: Okay.

10:15AM 13 MR. EOANNOU: I say, how can you make the argument

10:15AM 14 that it's directly connected to the drugs? You can't.

10:15AM 15 THE COURT: Well --

10:15AM 16 MR. EOANNOU: He says he's a landscaper. He's

10:15AM 17 presumed innocent. There's no direct linkage to --

10:15AM 18 THE COURT: I agree with you. He's presumed

10:15AM 19 innocent.

10:15AM 20 MR. EOANNOU: -- the money and the drugs. They can

10:15AM 21 say that all they want; that all that money is drug money.

10:15AM 22 They can't prove it. And it's almost impossible,

10:15AM 23 mathematically, when you think about it. Over nine months,

10:15AM 24 they got less than \$3,500 in buys. So, that makes it

10:16AM 25 mathematically illogical unless he's been standing on that

10:16AM 1 corner for 10 years.

10:16AM 2 THE COURT: Give me the argument again. I'm trying

10:16AM 3 to follow your argument.

10:16AM 4 MR. EOANNOU: There is no proof -- direct proof it's

10:16AM 5 drug-related. There is nothing illegal, per se, about having

10:16AM 6 cash in your house. He has taken the position he is a

10:16AM 7 landscaper. The logic in this case is that over nine months,

10:16AM 8 they got 27 buys equalling 35 grams at \$100 a gram is

10:16AM 9 35 grams. That would take 10 times the 9 months to get the

10:16AM 10 35,000, which is 90 months.

10:16AM 11 THE COURT: So, you're saying that the \$35,000 in

10:16AM 12 cash was related to his landscaping business?

10:16AM 13 MR. EOANNOU: No. I'm saying, Judge, it's not a

10:16AM 14 basis to detain him. It's a factor to consider. He's

10:16AM 15 presumed innocent. And he's staked his claim that he is a

10:16AM 16 landscaper. And the insignificant, small, street-level

10:17AM 17 sales --

10:17AM 18 THE COURT: Explain one more thing.

10:17AM 19 MR. EOANNOU: Sure.

10:17AM 20 THE COURT: You're saying he's presumed innocent.

10:17AM 21 And there's no question about that. And the government will

10:17AM 22 have to prove beyond a reasonable doubt all these charges in

10:17AM 23 the trial. No question about it. What does that have to do

10:17AM 24 with the argument we're making here today?

10:17AM 25 MR. EOANNOU: The argument I am making today is

10:17AM 1 that --

10:17AM 2 THE COURT: He's presumed -- because your client has
10:17AM 3 indicated to you, apparently, that he's in the landscaping
10:17AM 4 business, that therefore that is evidence that he is in the
10:17AM 5 landscaping business. That's your argument?

10:17AM 6 MR. EOANNOU: No. I am saying --

10:17AM 7 THE COURT: Do you have any evidence at all that he's
10:17AM 8 in the landscaping business?

10:17AM 9 MR. LENIHAN: Zero.

10:17AM 10 THE COURT: Does he have any equipment that would
10:17AM 11 show that like trucks, bulldozers, hoes, rakes, flowers,
10:17AM 12 plants, whatever else you have in the landscaping business?

10:17AM 13 MR. LENIHAN: Absolutely none.

10:17AM 14 MR. EOANNOU: They wouldn't know that, Judge. And
10:17AM 15 they wouldn't know if he worked for a landscaper off the books
10:17AM 16 or whatever.

10:17AM 17 THE COURT: How would you -- wait a minute. If you
10:17AM 18 are in a landscaping business -- were you at his house or his
10:18AM 19 place of business? Allegedly he has one?

10:18AM 20 MR. LENIHAN: No.

10:18AM 21 THE COURT: Were you at his house?

10:18AM 22 MR. LENIHAN: We were at his residence.

10:18AM 23 THE COURT: Was there any evidence of landscaping
10:18AM 24 business?

10:18AM 25 MR. LENIHAN: Not to my knowledge.

10:18AM 1 THE COURT: Was there any indication that he has an
10:18AM 2 office? Was there any place where he had like, supplies for
10:18AM 3 landscaping?

10:18AM 4 MR. LENIHAN: What we do know is that the
10:18AM 5 defendant --

10:18AM 6 THE COURT: Do you have any evidence at all that
10:18AM 7 there's an establishment known as a landscaping business?

10:18AM 8 MR. EOANNOU: Judge, he's only told me he's worked in
10:18AM 9 the landscaping business.

10:18AM 10 THE COURT: Worked in the landscaping business?

10:18AM 11 MR. EOANNOU: Correct. That's all I know.

10:18AM 12 THE COURT: \$35,000 in cash in the house?

10:18AM 13 MR. EOANNOU: Right. And the government seized it.
10:18AM 14 So, there goes the risk of flight argument with that.

10:18AM 15 THE COURT: What does that have to do with risk of
10:18AM 16 flight?

10:18AM 17 MR. EOANNOU: Because he no longer has the funds now
10:18AM 18 to flee because the government has his money.

10:18AM 19 THE COURT: You can get in a car and drive somewhere.

10:18AM 20 MR. EOANNOU: With no money, how far can he get?
10:18AM 21 Especially if you're on --

10:18AM 22 THE COURT: I don't know.

10:18AM 23 MR. EOANNOU: -- if you're on home detention with an
10:18AM 24 electronic monitor, you're not going to get very far with no
10:18AM 25 money, an electronic monitor and home detention. And that's

1 why -- you know, the Second Circuit has said, Judge, that in
2 terms of detention, only a limited group of defendants should
3 be denied it, pending bail, because they're presumed innocent.
4 Now, there's a lot of factors that they're saying.

5 We are rebutting that. We are rebutting that with
6 the family's home. The sister is a licensed practical nurse,
7 works at ECMC in a totally legitimate job. She's here, all
8 ready and willing to put the cash up, already signed the
9 \$15,000 signature bond. His brother-in-law, Alonzo Alexander,
10 is here and he works, he runs a 100-unit apartment complex.
11 He also lives in that house, which he would lose. He's
12 willing to put up the money and the \$15,000 signature bond.
13 His fiancée, Deandre Parker, she works as a health care aide
14 and she's willing to sign --

15 THE COURT: You're talking about risk of flight. I'm
16 more focused here on danger to the community.

17 MR. EOANNOU: Okay. The argument that shows he is
18 not a danger to the community is that he's been on probation
19 for five years with supervised -- without a single violation,
20 without a single problem in the community. There is no claim
21 of violence here. I understand the drug argument.

22 There are no weapons in this case. This is a five-
23 year mandatory minimum case with one felony conviction that he
24 didn't even go to jail for. In the back is an entire family
25 willing to put up all the assets that they have to show this

10:20AM 1 Court that they believe in him. So, that --

10:20AM 2 THE COURT: How many times has he been arrested,

10:20AM 3 Mr. Lenihan?

10:20AM 4 MR. EOANNOU: He's been arrested 11 times. Nine
10:20AM 5 times they've been dismissed. Most of the times he's been
10:20AM 6 arrested in groups of people and that should not be held
10:20AM 7 against him where there was a gun. His DNA wasn't on it. I
10:20AM 8 think nine people were arrested in that case and it was thrown
10:20AM 9 out immediately against Lamario.

10:20AM 10 THE COURT: Okay. Now, Mr. Lenihan indicated that he
10:20AM 11 lied to the probation officer.

10:20AM 12 MR. EOANNOU: Judge, on the *Williams* case --

10:21AM 13 THE COURT: Pardon me?

10:21AM 14 MR. EOANNOU: The *Williams* case -- which the
10:21AM 15 government likes to cite -- in the *Williams* case, they told
10:21AM 16 the Court, they said, look at, the mom just died and I spend
10:21AM 17 97 percent of my time taking care of the seven children.
10:21AM 18 Okay? That's complete deceit on the Court. Here, he does
10:21AM 19 stay at his mother's sometimes and he didn't want to
10:21AM 20 incriminate himself and I get that. There was money at the
10:21AM 21 house --

10:21AM 22 THE COURT: You lie to the probation office and in
10:21AM 23 your world that's okay?

10:21AM 24 MR. EOANNOU: No, it's not okay, but it's not
10:21AM 25 *Williams*.

10:21AM 1 THE COURT: Isn't not what?

10:21AM 2 MR. EOANNOU: It's not straight-up deceit to the

10:21AM 3 Court that I've got -- my wife is dead and I've got kids that

10:21AM 4 will be homeless. That's not what he said. He didn't want

10:21AM 5 them to go to his house.

10:21AM 6 THE COURT: What was the question that was asked of

10:21AM 7 him by the probation office and what was his answer?

10:21AM 8 MR. LENIHAN: Where do you reside? His answer was

10:21AM 9 65 John James Audubon Drive.

10:21AM 10 THE COURT: What is there?

10:21AM 11 MR. LENIHAN: An office complex.

10:21AM 12 MR. EOANNOU: He gave the wrong address. His mother

10:21AM 13 lives on John James Audubon Parkway and he does stay there

10:21AM 14 sometimes. I have confirmed it with the family.

10:22AM 15 THE COURT: It's an office complex. She lives in an

10:22AM 16 office complex?

10:22AM 17 MR. EOANNOU: No. He gave the wrong address. He

10:22AM 18 wasn't sure of the address.

10:22AM 19 THE COURT: How do you know that?

10:22AM 20 MR. EOANNOU: I asked Tanisha when they were in my

10:22AM 21 office.

10:22AM 22 THE COURT: It's an office complex.

10:22AM 23 MR. EOANNOU: No -- the address that he gave us, but

10:22AM 24 the mom does live on John James Audubon Parkway. There's a

10:22AM 25 housing development over there.

10:22AM 1 THE COURT: You don't think that's significant?

10:22AM 2 MR. EOANNOU: Not significant enough to take a man's

10:22AM 3 liberty, Judge.

10:22AM 4 THE COURT: You've got a lot of factors here, other

10:22AM 5 than that.

10:22AM 6 MR. EOANNOU: Right. There are a lot of factors.

10:22AM 7 And we -- that's why Magistrate McCarthy wisely said, okay,

10:22AM 8 I'm not going to release you on curfew, like he did

10:22AM 9 originally. That's why we put up the house, to make sure the

10:22AM 10 Court was convinced there was a reason -- a set of conditions

10:22AM 11 that would reasonably assure his return to court and he

10:22AM 12 wouldn't be a danger to the community. That's why three

10:22AM 13 people with good jobs said, okay, we'll put up the money,

10:22AM 14 we'll lose it if he violates, we'll put up our home and lose

10:22AM 15 it if he violates.

10:23AM 16 So, when you take the factors and you take what the

10:23AM 17 defense has put up and the fact that there should be -- the

10:23AM 18 Court should consider these combination of conditions, he

10:23AM 19 should be released, Judge. It's a very stringent bail. He

10:23AM 20 should be admonished and released. And again, it's a five-

10:23AM 21 year mandatory minimum --

10:23AM 22 THE COURT: I should -- I should admonish --

10:23AM 23 MR. EOANNOU: Like Judge McCarthy said, if there's

10:23AM 24 any problem whatsoever, you'll be remanded, but he --

10:23AM 25 THE COURT: But any problem whatsoever; what does

10:23AM 1 that mean?

10:23AM 2 MR. EOANNOU: Any violation of the terms and
10:23AM 3 conditions of release. And again, for five years, he didn't
10:23AM 4 have a single problem as being a danger to the community when
10:23AM 5 he was supervised.

10:23AM 6 THE COURT: He was under supervision by whom for five
10:23AM 7 years?

10:23AM 8 MR. LENIHAN: The Erie County Probation Department.

10:23AM 9 THE COURT: A five-year period of probation. That
10:23AM 10 seems to be a relatively long period of probation.

10:23AM 11 MR. LENIHAN: It was. And the --

10:23AM 12 THE COURT: And what was the underlying charge that
10:23AM 13 he was on probation for?

10:23AM 14 MR. LENIHAN: For possession of a controlled
10:23AM 15 substance.

10:23AM 16 THE COURT: What kind of controlled substance?

10:23AM 17 MR. LENIHAN: I know it was a Class D felony. I
10:24AM 18 believe it was cocaine, but --

10:24AM 19 MR. EOANNOU: And Judge, any felony in New York State
10:24AM 20 under New York State law requires a minimum of a five-year
10:24AM 21 probationary sentence. He did the entire five years without a
10:24AM 22 problem. It's not a particularly long sentence --

10:24AM 23 THE COURT: It's what?

10:24AM 24 MR. EOANNOU: It's the minimum sentence on a felony.

10:24AM 25 MR. LENIHAN: It appears, Judge, that he was arrested

10:24AM 1 while he was on probation. But according to the pretrial
10:24AM 2 services report, there was -- I don't have any information
10:24AM 3 that he was actually violated. In most of those arrests,
10:24AM 4 he -- charges were dismissed. He was arrested in 2009, 2010,
10:24AM 5 2012 and 2013 while he would have been on probation.

10:24AM 6 THE COURT: He was arrested while he was on
10:24AM 7 probation?

10:24AM 8 MR. LENIHAN: Yes.

10:24AM 9 MR. EOANNOU: And he was not violated because the
10:24AM 10 charges were dismissed and that should not be held against
10:24AM 11 him.

10:24AM 12 THE COURT: Why were the charges dismissed? Do you
10:24AM 13 know?

10:24AM 14 MR. LENIHAN: I can't -- I don't have those files.

10:24AM 15 THE COURT: Why were the charges dismissed?

10:24AM 16 MR. LENIHAN: What, Judge?

10:24AM 17 THE COURT: Why were the charges dismissed?

10:24AM 18 MR. EOANNOU: Because there was no proof.

10:24AM 19 THE COURT: Why was he arrested?

10:24AM 20 MR. EOANNOU: Because, you know, Judge, I did see at
10:24AM 21 some point, some of the charges -- I did look at them. They

10:25AM 22 arrested a group of people. And then, they would figure out
10:25AM 23 whose gun it was or whose drugs it was. And that's how -- my
10:25AM 24 understanding is that's how those shook out. And the bottom
10:25AM 25 line is, he was dismissed. You can't hold that conduct

10:25AM 1 against him. He was not violated on probation.

10:25AM 2 And by the way, in the state system, if you are
10:25AM 3 arrested and there's a basis for your arrest, the probation
10:25AM 4 officer makes a decision, not on the conviction but on the
10:25AM 5 arrest. And in his case, now, as they do in federal court,
10:25AM 6 not one time did he violate the terms and conditions of his
10:25AM 7 probation and he successfully completed it.

10:25AM 8 THE COURT: All right. Anything further?

10:25AM 9 MR. EOANNOU: No, Judge.

10:25AM 10 THE COURT: I'll reserve decision on it.

10:25AM 11 MR. EOANNOU: Thank you.

10:25AM 12 MR. LENIHAN: Thank you, Your Honor.

10:25AM 13 (Proceedings ended at 10:25 a.m.)

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3 I certify that the foregoing is a
4 correct transcription of the proceedings
5 recorded by me in this matter.

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9 s/ Megan E. Pelka, RPR

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Court Reporter,

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